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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,715	04/30/2001	George Jackowski	2132.030	3820
<div>21917 7590 04/17/2007 MCHALE &amp; SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410</div>				
<div>EXAMINER SKIBINSKY, ANNA</div>				
<div>ART UNIT PAPER NUMBER 1631</div>				
<div>MAIL DATE DELIVERY MODE 04/17/2007 PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 09/845,715	Applicant(s) JACKOWSKI ET AL.	
	Examiner Anna Skibinsky	Art Unit 1631	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 36-43.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**RAM R. SHUKLA, PH.D.**  
**SUPERVISORY PATENT EXAMINER**

## Continuation of Item 3 NOTE:

The proposed amendments introduce the new process claims 44-50 and if entered would introduce substantive change to the claimed method for determining presence of an isolated biopolymer marker and thus introduces new issues requiring further search and consideration.

In regard to after final practice, MPEP section 821.04 states:

Amendments submitted after allowance are governed by 37 CFR 1.312. Amendments to add only process claims which depend from or otherwise require all the limitations of an allowed product claim and which meet the requirements of 35 U.S.C. 101, 102, 103, and 112 may be entered.

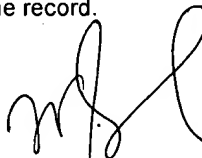
Amendments submitted after final rejection are governed by 37 CFR 1.116. When all claims to the elected product are in condition for allowance, all process claims eligible for rejoinder (see MPEP § 821.04) must be considered for patentability.

If an amendment after final rejection that otherwise complies with the requirements of 37 CFR 1.116 would place all the elected product claim(s) in condition for allowance and thereby require rejoinder of process claims that raise new issues requiring further consideration (e.g., issues under 35 U.S.C. 101 or 112, first paragraph), the amendment could be denied entry. For example, if pending nonelected process claims depend from a finally rejected product claim, and the amendment (or affidavit or other evidence that could have been submitted earlier) submitted after final rejection, if entered, would put the product claim(s) in condition for allowance, entry of the amendment (or evidence submission) would not be required if it would raise new issues that would require further consideration, such as issues under 35 U.S.C. 101 or 112, first paragraph necessitated by rejoinder of previously nonelected process claims.

The newly presented claims require further search and consideration under 112, 1<sup>st</sup> paragraph.

## Continuation of Item 11 NOTE:

The rejections in the previous Office action mailed 12/14/07 are maintained for reasons of record. Applicants arguments are directed to amendments to the instant claims which have not been entered onto the record.



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